

the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply the provisions of section 1103(g). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(g). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(g) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(g) is irrevocable.

(e) *Final certification.* An election under section 1103(g) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property (including property described in the proviso of section 4(a)(2) of the Bank Holding Company Act).

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(g) shall not be considered to be made before the distribution or sale unless the certification and the election are made before the distribution or sale.

[T.D. 7570, 43 FR 52057, Nov. 8, 1978. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-10T Election by certain family-owned bank holding companies to divest all banking or nonbanking property.

(a) *In general.* For purposes of sections 1101 through 1103 and 6158 of the Code, a bank holding company may

elect under section 1103(h) to have the determination of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) as if the Act did not contain clause (ii) of section 4(c) thereof.

(b) *Manner of making election.* The election under section 1103(h) shall be made in a written statement filed with the Federal Reserve Board indicating that by resolution of its board of directors, the bank holding company is electing to apply, the provisions of section 1103(h). In addition, the bank holding company shall indicate on its income tax return for each taxable year in which the election applies to a distribution or sale of property (in the manner specified in the Internal Revenue Service's instructions for the preparation of the return) that it has made the election under section 1103(h). The election shall be considered to be made on the date on which the written statement is received by the Federal Reserve Board.

(c) *Scope of election.* The election under section 1103(h) applies to all determinations of whether property is prohibited property or is property eligible to be distributed without recognition of gain under section 1101(b)(1).

(d) *Election; binding effect.* An election made under section 1103(h) is irrevocable.

(e) *Final certification.* An election under section 1103(h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, includes a certification by the Federal Reserve Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(f) *Conditional certification.* A certification by the Federal Reserve Board under section 1101 (a)(1)(B), 1101 (b)(1)(B), 1101 (c)(2)(C), 1101 (c)(3)(C), or 6158(a) that is conditioned upon the bank holding company's making an election under section 1103(h) shall not be considered to be made before the

distribution or sale unless the certification and the election are made before the distribution or sale.

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§301.9100-11T Election by a qualified bank holding corporation to pay in installments the tax attributable to sales under the Bank Holding Company Act.

(a) *In general.* Under section 6158(a) of the Code, a qualified bank holding corporation may elect to pay in installments the tax under chapter I of the Code attributable to the sale of bank property or prohibited property (as those terms are defined in section 6158(f) (2) and (3)) if—

(1) It meets the conditions described in paragraph (b) of this section, and

(2) It files an election in accordance with the rules set forth in paragraph (c) of this section.

(b) *Conditions.* (1) The sale of bank property or prohibited property must take place after July 7, 1970.

(2) The Federal Reserve Board must certify before the sale of the bank property or prohibited property that the divestiture of such property is necessary or appropriate to effectuate section 4 or the policies of the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*).

(3) If bank property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of prohibited property, or

(ii) Previously distributed prohibited property under section 1101(a).

(4) If prohibited property is sold, the qualified bank holding corporation (or a corporation having control of it or a subsidiary of it) must not have—

(i) Previously elected to apply section 6158 to a sale of bank property, or

(ii) Previously distributed bank property under section 1101(b).

(5) The qualified bank holding corporation must not have elected to return the income from the sale under the installment provisions of section 453.

(c) *Time and manner of making election.* (1) Except as provided in paragraph (c)(2) of this section, a qualified

bank holding corporation shall make the election under section 6158(a) by—

(i) Attaching a statement to its income tax return for the taxable year in which the prohibited property or bank property is sold showing the tax computation under paragraph (f) of this section and the amount of the installment paid with the return, and

(ii) Entering the amount of the installment payment followed by the words “computed under section 6158” in the appropriate place on the tax return.

(2) If the qualified bank holding corporation filed its income tax return for the year of sale before February 6, 1979 (without electing under section 6158(a)), then it shall make the election under section 6158(a) by attaching a statement to its claim for credit or refund (amended tax return) for its overpayment of income tax attributable to the application of section 6158 showing the tax computation under paragraph (f) of this section and entering the amount of the credit or refund followed by the words “attributable to the application of section 6158” in the appropriate place on the claim. In order for the election to be effective, the claim must be filed before the earlier of—

(i) The expiration of the period of limitation for the filing of the claim, or

(ii) February 6, 1979.

(d) *Scope of election.* An election under section 6158 will apply only to the particular sale or sales of property with respect to which the election is being made.

(e) *Special rule for certifying sales.* For purposes of section 6158(a) and paragraph (b)(2) of this section, in the case of a sale which takes place after July 7, 1970, and before January 1, 1977, a certification by the Federal Reserve Board shall be treated as made before the sale if application for such certification was made before January 1, 1977.

(f) *Tax attributable to sales.* The tax under chapter I of the Code attributable to sales with respect to which an election under section 6158 has been made shall be the amount, if any, by which the tax under chapter I on the taxable income of the qualified bank holding corporation (computed without regard to section 6158) for the taxable